

IT 95-23

Tax Type: INCOME TAX

Issue: Unreported/Underreported Income (Fraud Application)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

```
-----  
DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS         )  
                           )   Docket:  
      v.                   )   SSN:  
                           )  
XXXXXX                    )  
                           )   Wendy S. Paul  
                           )   Admin. Law Judge  
      Taxpayer(s)         )  
-----
```

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This case involves the taxpayer's liability for Illinois income tax for the taxable year ended December 31, 1989 and for penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 as set out in the Department's Notice of Deficiency. In a timely filed Protest, taxpayer alleged, first, that the Department's Notice failed to properly reflect amounts withheld and paid to the state, and second, that Taxpayer was entitled to an additional exemption for her child since her ex-husband failed to provide child support.

A hearing was held on March 6, 1995. Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency, as reduced by the Technical Support Unit, be upheld.

FINDINGS OF FACT:

1. For the subject taxable year, Taxpayer was an Illinois resident, earned income in the state of Illinois, and did not file an Illinois income tax return. Dept. Ex. No. 1; Taxpayer Ex. No. 3.

2. The Department of Revenue issued a Notice of Deficiency for the subject taxable year. Dept. Ex. No. 1

3. Taxpayer filed a timely Protest. Dept. Ex. No. 2

4. In her Protest, Taxpayer alleged, first, that the Department's Notice of Deficiency failed to reflect amounts withheld and paid to the state during the taxable year, and second, that she was entitled to an additional exemption because her ex-husband failed to provide child support. Dept. Ex. No. 2

5. Taxpayer's Protest did not allege that an Illinois income tax return was filed for the subject taxable year. Dept. Ex. No. 2

6. Taxpayer testified that she thought that she had filed an Illinois return and that she had made a partial payment of \$20.00 but the Department's records fail to reflect that a return was filed or that such \$20.00 payment was ever made and Taxpayer produced no documentary proof to support her testimony. Dept. Ex. No. 1

7. On her federal income tax return, taxpayer claimed only one (1) exemption. Taxpayer Ex. No. 3

8. During the subject taxable year, Taxpayer was suffering from stress and some physical problems.

9. During the subject taxable year, Taxpayer received a salary from XXXXX and also received income from that corporation for consulting services. Taxpayer Ex. No. 3

10. During 1990 through 1993, Taxpayer worked full-time at XXXXX.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the state of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) Taxpayer, as an Illinois resident who earned income this state, was accordingly subject to Illinois income tax and was required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale

v. Illinois Department of Revenue, 118 Ill. App. 3d 210 (3rd Dist.1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist.1978). Here, Taxpayer simply testified that she thought that she had filed a return and made a small payment. Her testimony, however, was unsupported by any documentary evidence and was rebutted by the Department's records.

A taxpayer cannot overcome the Department's prima facie case merely by denying the accuracy of its assessments. (Smith v. Department of Revenue, 143 Ill. App. 3d 607 (5th Dist.1986); Puleo v. Department of Revenue, 117 Ill. App. 3d 260 (4th Dist.1983); Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist.1978)) The taxpayer must present evidence which is consistent, probable, and identified with its books and records. Fillichio v Department of Revenue, 15 Ill.2d 327 (1958) Accordingly, Taxpayer failed to overcome the Department's prima facie case that no return was filed and no tax was paid.

Taxpayer's first contention in her Protest, that the Department's Notice failed to reflect the amount of tax withheld is correct. After the hearing, the Department's Technical Support Unit revised the Notice by giving Taxpayer credit for all amounts withheld.

Taxpayer's second contention, that she should be allowed two (2) exemptions, is without merit. Additional exemptions are allowable under the Illinois Income Tax Act only where such additional exemptions are allowed federally. 35 ILCS 5/204(c) Here, Taxpayer's federal income tax return reflects only one (1) exemption. (Taxpayer Ex. No. 3)

At the hearing, Taxpayer testified that she had been under some stress for personal problems and had also had certain medical problems during the subject tax year. While this may have been true, Taxpayer in fact was able to work both as a salaried employee and a consultant during the subject tax

year. In 1990, when her income tax returns were due, she was a full time employee of Baxter and in fact was so employed until 1993. Accordingly, I do not find that Taxpayer's failure to timely file and/or pay was due to reasonable cause sufficient to warrant an abatement of penalties pursuant to 35 ILCS 5/1001 and/or 5/1005.

It is my recommendation that the Notice of Deficiency, as modified and reduced by the findings of the Department's Technical Support Unit (attached), should be upheld.

Wendy S. Paul
Administrative Law Judge